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OGC 61-0639

OGC Has Reviewed

18 April 1961

MEMORANDUM FOR: Chief, FE Division

ATTENTION :

LEGAL

SUBJECT : Authorities and Procedures under Singapore
Constitution

1. This is addressed to the situation as I think it now is, in particular the projected developments reported by [redacted]

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2. With reference to the Prime Minister's intention to submit the present matter to the Cabinet for decision, the Constitution provides for a Cabinet and provides further that, subject to the Constitution, the Cabinet "shall have the general direction and control of the government of Singapore and shall be collectively responsible therefor to the Assembly." (Section 20(2)) There are no specific powers in the Cabinet. Although the Constitution contemplates Cabinet proceedings by vote, there is no requirement that any matter be submitted to vote, nor is there a requirement that the Prime Minister be bound by the vote or other action of the Cabinet. Further, the Cabinet "shall not be summoned except by the authority of the Prime Minister" (Section 26) and the Prime Minister may retain in his charge any department "or subject." (Section 27(2)).

3. The United Kingdom Commissioner has certain rights with respect to the business of the Cabinet. He shall be provided with copies of the agenda of the Cabinet at the same time they are circulated to Ministers. (Section 18(1)(2)) As soon as practicable following the discussion, decision or conclusion by the Cabinet, he shall be provided with a list of all matters discussed by the Cabinet which were not on the agenda. (Section 18(1)), copies of "a statement

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of the decisions and conclusions of the Cabinet relating to matters which, in the opinion of the Prime Minister, either affect the responsibilities of the Government of the United Kingdom for defence and external affairs or are matters which the United Kingdom Commissioner may wish to raise before the Internal Security Council" (Emphasis supplied, Section 18(1)(b)), and copies of "all other papers laid before the Cabinet relating to matters," etc. (Section 18(1)(c)). Finally,

"If it appears to the United Kingdom Commissioner that any other decision or conclusion of the Cabinet or any other paper laid before the Cabinet relates to matters which are liable to affect the aforesaid responsibilities of the Government of the United Kingdom or which he may wish to raise before the Internal Security Council, he may request the Prime Minister to provide him with a statement of that decision or conclusion or with facilities to read that paper, and if the Prime Minister is not able otherwise to satisfy the United Kingdom Commissioner that that decision, conclusion or paper (as the case may be) does not relate to such matters, he shall provide that statement or those facilities." (Section 18(3))

4. There is also a National Security Council consisting of the United Kingdom Commissioner as Chairman, the Prime Minister, two members appointed by each of the former, and a seventh member who may be appointed by the Government of the Federation of Malaya. Mr. [redacted] advises that a seventh member in fact has been appointed. The Council is for the purpose of dealing with matters in which defense and external affairs involve or overlap internal security. Under Part VIII of the Constitution, as noted, defense and external affairs are the responsibility of the Government of the United Kingdom. In order to discharge this responsibility, the

"Government of the United Kingdom may, whenever it is of the opinion that the discharge of its responsibilities for defence or external affairs so requires, request the Government of Singapore, by a communication made through the United Kingdom Commissioner, to take any action specified in that communication or to discontinue or refrain from any action which is so specified; and, subject to the provisions of subsection (3) of this section, the Government of Singapore shall, as soon as may be, comply with any such request except to the extent that the Internal Security Council decides, in accordance with the provisions of subsection (7) of this section, that the subject-matter of the request is a matter of internal security and not of defence or external affairs." (Section 74(1))

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Subsections (2) and (4) of Section 74 permit the United Kingdom Commissioner, if he "is satisfied that the provisions of subsection 1 have not been complied with," to so inform the Yang di-Pertuan Negara and advise him to make an Order giving effect to the request of the United Kingdom Commissioner and the Yang di-Pertuan Negara shall do so and the Order "shall be published in the Gazette." Subsection (7) of Section 74 provides that if the Government of Singapore is of the opinion that the subject matter of any request from the Government of the United Kingdom under Section 74(1) is a matter of internal security and not of defense or external affairs, that Government may notify the United Kingdom Commissioner accordingly and the question shall forthwith be referred to the National Security Council for decision.

5. The functions of the Council are "to consult together on all questions of policy relating to the maintenance of public safety and public order in Singapore" (Section 65(a)), "to maintain the efficiency of all organs of the Government of Singapore which are concerned with internal security" (Section 65(b)), and "to make decisions for the maintenance of the internal security of Singapore or for the due performance of the functions conferred on it by" (Section 66(1)) the foregoing. Decisions of the Council shall be forthwith communicated to the Government of Singapore "and it shall be the duty of that Government to give immediate effect to that decision" (Section 66(2)). Actions of the Council are by simple majority vote.

6. Thus, it appears that:

(a) The Prime Minister need not refer the matter to the Cabinet.

(b) If he does, the Cabinet need not act.

(c) If the Cabinet does act, the Prime Minister is not bound.

(d) The United Kingdom Commissioner is entitled to receive a copy of the agenda of the Cabinet meeting in advance and to be advised of all actions taken by the Cabinet.

(e) When the Government of the United Kingdom feels that the discharge of its responsibility for defense and external affairs so requires, the United Kingdom Commissioner may request the Government of Singapore to take or discontinue a specified action.

(f) If the Commissioner so requests, the Government of Singapore shall comply, unless the Government of Singapore decides it is a matter of internal security.

(g) If the Government of Singapore believes the matter is one of internal security, it shall refer the item to the Internal Security Council for decision by majority vote.

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Assistant General Counsel